

CONFIDENTIAL
WEEKLY HOT ISSUES REPORT for RA/DRA Region 8
Week ending February 10, 2017

Items titled in red are suggestions for the R8 weekly report to the Administrator's Office.

OFFICE OF ECOSYSTEMS PROTECTION AND REMEDIATION

No report

OFFICE OF ENFORCEMENT, COMPLIANCE & ENVIRONMENTAL JUSTICE

This Week

NPDES ENFORCEMENT TO ENTER INTO PENALTY NEGOTIATIONS WITH CITY OF LOUISVILLE, CO FOR FAILING TO IMPLEMENT ITS APPROVED PRETREATMENT PROGRAM: During the week of February 20, 2017, NPDES Enforcement plans to contact the City of Louisville (City), Colorado to invite the City to enter into penalty negotiations and eventually into a combined complaint and consent agreement for failing to implement its approved pretreatment program in multiple areas. Violations were observed during a July 11 and 12, 2013, EPA pretreatment compliance inspection. On March 7, 2014, the EPA and City entered into an administrative order on consent to bring the City back into compliance. The calculated economic benefit of noncompliance was over \$700,000, most of which was due to the delayed cost of constructing drying beds at the City's drinking water treatment plants (DWTPs) to manage backwash rather than discharging the backwash to the publicly owned treatment works (POTW). Due to higher irrigation water demand during summer months, the DWTPs were discharging higher quantities of backwash wastewater containing manganese to the POTW. This resulted in the pollutant passing through the POTW to the receiving stream and effluent limit exceedances at the POTW. Using the municipal litigation consideration in the penalty policy, preliminary penalty calculations indicate a bottom line of approximately \$52,000 to \$70,000. The EPA implements the pretreatment program in Colorado as the State has not sought authorization for this portion of the NPDES program. The Colorado Department of Public Health and Environment will be informed prior to contacting the City.

Contact: Peggy Livingston, 312-6858 (legal); Stephanie DeJong, 312-6362 (supervisory)

DOJ TRANSMITS EXECUTIVE ORDER LETTERS WITH ATTACHED TOLLING AGREEMENTS TO POTENTIALLY RESPONSIBLE PARTIES AT THE WIDFIELD PCE (PERCHLOROETHYLENE) SITE, EL PASO COUNTY, COLORADO: The Widfield PCE site (Site) is characterized by a PCE plume within the Widfield Aquifer. The PCE Plume was investigated and delineated by the Colorado Department of Health and Environment (CDPHE) in 2010. The Security Water District, which owns municipal drinking water wells impacted by the PCE plume, requested immediate assistance from the EPA to protect public health and prevent PCE from entering Security's municipal water supply. The Region 8 Removal Program initiated a time-critical removal action at the Site in March 2013 to remove PCE at several wells impacted by the plume. The removal action at the Site involved the installation of a water treatment facility. As of October 31, 2015, the EPA's costs at the site were \$3,270,799.47. The Legal Enforcement Program has submitted a litigation referral to DOJ, requesting assistance in the recovery of the response costs incurred at the Site. The statute of limitations associated with the EPA's cost recovery claims will expire on April 19, 2017. During the week of February 6, 2017, DOJ plans to send Executive Order Letters with attached tolling agreements to the two potentially responsible parties previously identified in the EPA's enforcement investigation—Guardian

Life Insurance Company of America and El Paso County Retirement Plan. The tolling agreements request a tolling period of 6 months with the potential for an extension. The EPA will continue to coordinate its efforts with CDPHE and the Security Water District.

Contact: Douglas Naftz, 312-6942 (legal); Shawn McCaffrey, 312-6515 (technical)

DRINKING WATER ENFORCEMENT IS ISSUING AN ADMINISTRATIVE ORDER REGARDING THE CAMP PAINTROCK PUBLIC WATER SYSTEM, LOCATED IN BIG HORN COUNTY, WYOMING:

An administrative order (Order) is being issued to the owner of Paint Rock Canyon Enterprises, LLC, and the operator, C5 Youth Foundation of Southern California, Inc. for violations of the Safe Water Drinking Act (SDWA) and its implementing regulations at the Camp Paintrock public water system (System). The System supplies water from June through August to approximately 75 underprivileged urban Los Angeles students as a part of a mentoring program. Alleged violations are for failure to monitor for nitrate during 2015 and 2016. This is the third Order issued to the System in the last 5 years; the other two Orders are still in effect for failure to monitor total coliform and the source water, and for failure to correct significant deficiencies. An escalated enforcement action is being initiated as a result of the continued non-compliance. The Order requires the System to monitor as required by the regulations. Wyoming does not have delegated authority under the SDWA.

Contact: Kathelene Brainich, 312-6481 (technical); Lauren Hammond, 312-7081 (legal)

DISTRICT COURT ENTERS CONSENT DECREE WITH SLAWSON EXPLORATION COMPANY, INC. FOR ALLEGED CLEAN AIR ACT VIOLATIONS AT OIL AND GAS PRODUCTION OPERATIONS IN NORTH DAKOTA:

On February 7, 2017, the United States District Court for the District of North Dakota issued an order granting the United States' motion to approve and enter a consent decree with Slawson Exploration Company, Inc. The consent decree alleges Clean Air Act violations at Slawson well pads and tank batteries associated with oil and gas production operations in North Dakota. The consent decree covers all of Slawson's approximately 170 well pads in North Dakota, including operations on the Fort Berthold Indian Reservation (FBIR), and resolves alleged violations of the FBIR Federal Implementation Plan and the North Dakota State Implementation Plan. Under the consent decree, Slawson will perform injunctive relief, as well as mitigation projects, and pay a civil penalty of \$2.1 million. The injunctive relief and mitigation projects included in the consent decree will result in significant reductions in emissions from Slawson's well pads. ECEJ estimates that VOC emissions from storage tanks will be (or have already been) reduced by over 11,700 tons per year (tpy) and hazardous air pollutant emissions will be reduced by over 400 tpy.

Contact: Jessica Portmess, 312-7026 (legal); Alex North, 312-7005 (technical); Scott Patefield, 312-6248 (supervisory)

OFFICE OF PARTNERSHIPS AND REGULATORY ASSISTANCE

Next Week

MEETING WITH GSA REGARDING PCB CONTAMINATION AT HANSEN FEDERAL BUILDING IN OGDEN, UTAH:

The PCB Program will meet with GSA on February 15, 2017, in the EPA Conference Center regarding PCB contamination issues at the Hansen Federal Building. In February 2015, GSA met with the PCB Program and reported that PCB paint had been found in the insulation liners of the building's heating, air, ventilation and conditioning (HVAC) system and that PCBs had been found in dust and the air in some office areas. PCBs were detected below Occupational Safety and Health Administration levels. The GSA reported that some tenants had raised health concerns about potential exposure to PCBs. The PCB Program consulted with a regional toxicologist and the **Agency for Toxic Substances and Disease Registry** in preparation for the meeting with GSA. Funding is not available for GSA to remove PCBs from the HVAC system. The PCB Program suggested that GSA continue air

monitoring and recommended investigation of other suspected PCB sources like the natural gas system and outdoor ambient air. In early June 2015, the GSA reported to the program that PCBs had been found in the natural gas line and that the contamination had been removed. Recently, the GSA informed the program that PCBs had been found in outdoor dusts. The program will meet with GSA to obtain more details of the investigations and discuss GSA's proposed PCB remedial plan.

Contacts: Francis Tran, 312-6036; Brenda South, 312-6446; Janice Pearson, 312-6354

EPA TO CLOSE THE BIG SPRINGS CREEK PCB CLEAN UP SITE: On February 13, 2017, the Region 8 PCB Program will participate in a public meeting at the Montana Fish Wildlife and Parks' (MFWP) office in Lewistown, Montana. Expected attendees include representatives from the EPA, MFWP, Montana Department of Environmental Quality (MDEQ), the local PCB Fish Advisory Committee, property owners along Big Springs Creek, and any other persons who may have been impacted from PCB exposures from the creek. Historically, PCBs were found in 2003 in some wild brown trout and later in stream sediment downstream from the Big Springs Creek State Trout Hatchery. PCB paint was used to coat the raceways since the 1960s and PCB paint chips discharged from the raceways into the stream over the years. Between 2004 and 2011, the MFWP removed all the PCB contamination within the hatchery property including the raceways, grounds, buildings and several fish tanks. Meanwhile, MFWP proceeded its investigations through sampling, risk assessment, geomorphic mapping and a feasibility study on the creek to support a preferred remedial action alternative approved by the public and our office in 2009. This alternative involved suction dredging the upper six inches of the streambed for a 2.77-mile stretch, about 561,216 square feet, of streambed below the hatchery. The stream cleanup was completed after three years of dredging and three years of post-monitoring stream sediment, benthic macro-invertebrates and fish. A catch-and-release restriction on fishing was lifted in 2013 shortly after suction dredging of stream sediment ended. Monitoring data show that the EPA approved PCB cleanup levels were achieved in three consecutive years. The Region 8 PCB Program will inform the public that the dredging efforts successfully meet the approved cleanup levels at Big Springs Creek and that no further PCB remedial or monitoring actions are required.

Contacts: Francis Tran, 312-6036; Janice Pearson, 312-6354

This Week

WINTERTIME OZONE PRODUCTION IN UINTA BASIN, UTAH: The Uinta Basin ozone episode continued through February 7 with ozone NAAQS exceedances every day since January 29 (with changing weather conditions, ozone concentrations had dropped to close to background on February 8). Ozone reached *Very Unhealthy Air Quality Index* levels (8-hour average above 105 ppb) at the Ouray monitor on February 1, 3 and 5, 2017. Ozone has been in the *Unhealthy* (86-104 ppb) and *Unhealthy for Sensitive Groups* (71 to 85 ppb) levels in the communities of Myton and Roosevelt and at Dinosaur National Monument. The Air Program reached out to the Ute Indian Tribe last week regarding the high values and is working to set up a meeting with the Tribe's Air Program about health messaging to the public. The Uinta Basin has now had winter ozone exceedances in six of the past eight years. Past years have included three with more than 30 ozone exceedance days (2010, 2011, and 2013), three with a moderate number of exceedance days (eight in 2014, eleven in 2016 and eight thus far in 2017) and two with no winter exceedances (2012 and 2015).

Contacts: Gail Fallon, 312-6281; Richard Payton, 312-6439

AIR QUALITY MANAGEMENT ALERT ON OZONE DATA PROCESSING PRACTICES: On February 6, 2017, the Office of Inspector General (OIG) released a Management Alert titled *Certain State, Local and Tribal Processing Practices Could Impact Suitability of Data for 8-Hour Ozone Air Quality Determinations*. The alert reports that some state, local and tribal agencies may not be processing ozone ambient air monitoring data in accordance with the EPA's recommended practices, based on

findings from two states (Georgia and South Carolina). The investigation is ongoing, and as of last fall, the OIG requested information from several additional agencies, including the Wyoming Department of Environmental Quality here in Region 8. If the OIG conclusions are accurate, and the effects are widespread, they could potentially affect 8-hour ozone designations scheduled for October 2017. The management alert made no recommendations, and a final report will be issued when complete. The management alert was the subject of a February 6 *Greenwire* article.

Contacts: Gail Fallon, 312-6281; Richard Payton, 312-6439; Ethan Brown, 312-6403

Last Month

NORTH DAKOTA AND WYOMING'S AIR QUALITY MODELING ASSESMENTS FOR SUPPORTING SO₂ NAAQS DESIGNATIONS NEED TO BE UPDATED: In the final 2015 Data Requirements Rule (DRR), the EPA established conditions to assess compliance with the 2010 SO₂ NAAQS for designations. States had the flexibility to characterize air quality using modeling or monitoring, or accepting a limit below 2,000 tons per year. All SO₂ industrial sources in Region 8 that elected to use modeling submitted modeling packages by the January 13, 2017 DRR deadline. Based on the Air Program's initial review of the modeling, one source in North Dakota (Heskett power plant) and two sources in Wyoming (Dave Johnston and Naughton power plants) provided modeling that needs to be updated to reflect the EPA's most recent model version. Currently, these modeling analyses cannot be used to assess air quality or to support designations. The Air Program held an initial discussion with each state the week of February 6 concerning the need to update the modeling and options to support designations. Both states agreed to let us know in the next couple of weeks if any of the options would work.

Contacts: Scott Jackson, 312-6107; Rebecca Matichuk, 312-6867

OFFICE OF WATER PROTECTION

POTENTIAL INCOMING CALLS ON SOUTHERN UTE INDIAN TRIBE (SUIT) CLEAN WATER ACT PROGRAM AUTHORITY (OR TREATMENT IN A SIMILAR MANNER AS A STATE, TAS) APPLICATION FOR WATER QUALITY STANDARDS.

The SUIT water quality standards TAS application 30-day comment period closed Friday February 3, 2017. Region 8 received comments from a wide range of organizations and governmental entities. Comments supportive of the Tribe's authority to administer this program on tribal trust lands were received from the states of Colorado and New Mexico. Other entities such as towns (Durango, Bayfield, and Ignacio), irrigation districts, ditch companies, conservation districts and others provided a range of input with substantive comments falling into two categories: 1) entities asking for additional time in which to provide comments; and/or 2) entities asking for more detailed maps showing tribal trust lands. For example, Brice Lee, President of the La Plata Water Conservancy District submitted comments expressing concerns that this action may result in "undue regulation and interference" for water users who farm and ranch lands upstream and within the reservation boundaries. The letter, which was cc'd to the Colorado Governor, Colorado Senators Michael Bennett and Cory Gardner, U.S. Representative Scott Tipton, Colorado State Senator Don Coram, Colorado State House Representative Barbara McLachlan, and several La Plata County Commissioners, requested a 120-day extension of the comment period. The SUIT TAS application team (R8: OWP, ORC & TAP; and HQ: OST, OGC & OITA) is reviewing the comments submitted and considering whether the Agency will work with the Tribe to supply additional materials and possibly afford an extension of the comment period with the goal of having a decision within the next several weeks.

Contacts: George Parrish (x7027) / Sandie Spence (x6947) with questions.

WEBINAR ON THE 2017 CLEAN WATER ACT (CWA) SECTION 404 NATIONWIDE PERMITS (NWP) PLANNED FOR FIVE REGION 8 TRIBES. On February 22 experts from Region 8's CWA 404, watershed, and water quality standards programs will provide information on the 2017 NWPS to Region 8 tribes with Treatment in a Manner Similar to a State (TAS) authority for CWA water quality standards and CWA Section 401 water quality certification (certification). With their TAS authority, the Assiniboine and Sioux Tribes, Northern Cheyenne Tribe, Ute Mountain Ute Tribe, Confederated Salish Kootenai Tribes, and the Blackfoot Tribe are responsible for providing certification or denials for permits that allow discharge into their waters. The proposed Corps of Engineers 2017 NWPs recently published in the Federal Register will be summarized during the webinar. This webinar is for technical assistance and will not be a consultation because these tribes have the authority to provide certification for the NWPs. Because Region 8 is responsible for providing certification for the 2017 NWPs on behalf of the other tribes in Region 8, the Office of Water Protection has sent an offer of consultation to the other 22 Tribes in Region 8. **Contacts: Toney Ott at 303-312-6909; Brent Truskowski at 303-312-6235; Peter Brumm at 406-457-5029.**

OFFICE OF WATER PROTECTION CONSIDERS A POTENTIAL DENIAL PROPOSAL FOR AN AQUIFER EXEMPTION REQUESTED BY AMERICAN GILSONITE COMPANY.

Region 8's UIC Program has received a request from American Gilsonite Company (AGC) for exemption of the Bird's Nest Aquifer (BNA) to enable injection into the BNA using the company's permitted and constructed mine waste water Class V well. The well is located near Bonanza, Utah, on the Uintah and Ouray Indian Reservation. The UIC permit was initially requested by AGC on July 1, 2015, pursuant to an EPA Region 8 NPDES Enforcement Administrative Order on Consent (AOC) to resolve violations, by April 30, 2016, of its permitted surface discharge effluent limits. At the time of the UIC permit application the BNA was believed not be an Underground Source of Drinking Water (USDW) at the well site, so no exemption was requested. Upon drilling and completion of the well in September 2016, data indicated that a USDW is likely present. The BNA is a preferred disposal formation because its high permeability and porosity typically enable a high rate of injection at a relatively low surface injection pressure, as compared to other Uinta Basin formations. However, these same hydrogeologic characteristics also result in a high degree of uncertainty as to the transport and fate of injected fluids. These characteristics present a significant challenge for determining the appropriate size and shape of an exemption that ensures these fluids do not migrate into non-exempted portions of the BNA. The UIC program will reach out to AGC's consultants next week to discuss the uncertainty. Absent any further data from AGC to better characterize the BNA's hydrogeology, an EPA decision to deny AGC's aquifer exemption request would compel the company to consider other AOC compliance options. **Contacts: Douglas Minter, 303-312-6079; Jason Deardorff, 303-312-6583**

PROPOSED DENIAL OF CLASS V PERMIT FOR FAILING SEPTIC SYSTEMS NEAR MOUNT RUSHMORE, SOUTH DAKOTA. Region 8's Underground Injection Control (UIC) Program is issuing a notice of intent to deny a Class V permit for the Lodge at Mount Rushmore in Keystone, South Dakota owned by the Winona Inn Limited Partnership. In March 2016, EPA sent the operator of the facility's four septic systems a letter citing operational issues that pose an endangerment to underground sources of drinking water and requiring the operator to cease injection and apply for a Class V permit. The operator submitted an application in May 2016, which was incomplete. In close coordination with Pennington County and the South Dakota Department of Environment and Natural Resources (SDDENR), UIC Program staff provided several months of regulatory assistance in an effort to obtain the remaining required information including sanitary effluent sampling data. As the owner has not provided the required information and these systems continue to operate, Region 8 will issue a permit denial notice for public comment consistent with UIC regulations. We expect to public notice the proposed denial the week of February 13th, 2017, accepting comments on the proposal for 30 days and

consider the comments received in determining our final action. If this denial becomes final, EPA will order the facility to close these systems. Region 8 will notify the UIC program and Director at SDDENR and Pennington County of our proposal immediately prior to notifying the owner. **Contact: Douglas Minter, 303-312-6079**

REGION 8 IS SECURING HEARING LOCATIONS AND FINALIZING PUBLIC NOTICES FOR DRAFT PERMITS AND AQUIFER EXEMPTION DOCUMENTS FOR A URANIUM IN-SITU RECOVERY PROJECT NEAR THE BLACK HILLS, SOUTH DAKOTA. The Region 8 Underground Injection Control (UIC) Program is prepared to issue draft Class III and V UIC area permits and a proposed aquifer exemption decision to Powertech (USA) Inc. in the next two weeks for a proposed uranium in-situ recovery (ISR) project northwest of Edgemont, South Dakota. The permits allow for injection into an aquifer for extraction of uranium and deep injection wells for disposal of treated ISR process waste fluids. The proposed project site is near the Black Hills, where several tribal nations have historic claims or consider this area to be sacred. Through consultation with EPA, several tribes have raised concerns about potential impacts on historic properties of cultural importance. Region 8 will have more information the week of February 13th on the proposed notice date and will begin notification to tribes and the company next week that the draft permits will be forthcoming. There will be a 60-day public comment period on the draft permits and aquifer exemption and public outreach events (including hearings) near the site to allow ample opportunity for tribes and other stakeholders to provide comments. **Contact: Douglas Minter, 303-312-6079**

OFFICE OF TECHNICAL AND MANAGEMENT SERVICES

No report